

Capital Projects and Bond Oversight Committee

Minutes

November 18, 2003

The Capital Projects and Bond Oversight Committee met on Tuesday, November 18, 2003, at 1:00 PM, in Room 129 of the Capitol Annex. Senator Robert Leeper, Co-Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Robert Leeper, Co-Chair; Representative Jodie Haydon, Co-Chair; Senators Tom Buford, Virgil Moore, and Jerry Rhoads; Representatives Robert Damron, Paul Marcotte, and Jim Wayne.

Guests testifying before the committee: Dr. Bill Brundage, Economic Development Cabinet, Office for the New Economy; Ken Clevidence, Dr. Dick Siemer, and Mitch Barnhart, University of Kentucky; Mitchell Payne, University of Louisville; Cicely Lambert and Garlan Vanhook, Administrative Office of the Courts; Robin McQueary and Patty Lacy, Labor Cabinet; Jamie Link, Department for Facilities Management; Bill Hintze, Governor's Office for Policy and Management; Warren Nash, Economic Development Cabinet; and George Burgess and Tom Howard, Office of Financial Management.

LRC Staff: Mary Lynn Collins, Pat Ingram, Nancy Osborne, Kevin Mason, Bart Hardin, and Shawn Bowen.

Representative Marcotte made a motion to approve the minutes of the October 21, 2003, meeting. The motion was seconded by Senator Rhoads and passed by voice vote.

Senator Leeper called on Mary Lynn Collins, Committee Staff Administrator, to review correspondence and information items. Ms. Collins advised that the members' folders included the monthly financial report from the Lottery Corporation and a staff update on various capital projects. She said that both Murray State University and the Finance and Administration Cabinet failed to include in their last quarterly construction report projects authorized in the current budget, and both were asked to resubmit their reports. A report resubmitted by Murray State University was included in the members' folders. Ms. Collins said that the Finance Cabinet hopes to have their report resubmitted by next month's meeting.

Senator Leeper then introduced Dr. Bill Brundage, Commissioner for the Office for the New Economy (ONE), to discuss allocations made from the new economy pools. Dr. Brundage distributed an annual report compiled by his office and discussed the various initiatives funded through allocations from the new economy pools. Among the initiatives he discussed were: a

consortium for energy and environment which includes the University of Kentucky (UK), University of Louisville (U of L), Murray State University, and several private firms; the Cardiovascular Innovation Institute, based upon work done at Jewish Hospital in Louisville and the University of Louisville; the Natural Products Alliance, which will link medical and agricultural research to create commercially viable products; the Advanced Manufacturing Centers, whose goal is to develop and apply state-of-the-art technology to improve manufacturing processes and bring prototypes of new products to market; the Public Safety and Security Institute for Technology, a consortium with UK, U of L, Fort Knox, and Eastern Kentucky University to provide training and information on homeland security; the Northeastern New Economy Corridor, located in West Liberty, Kentucky, which is a collaborative effort between the region and UK engineering faculty to provide technical expertise to grow and sustain economic development; the Institute for New Economy Technology (iNET) at Northern Kentucky University, which is seeking to assist entrepreneurs in translating research and innovation into commercial successes; connectKentucky, a public/private partnership established by ONE to assess and prepare the state for the networked world; and six innovation and commercialization centers designed to help entrepreneurs build new technology-based companies and help scientists move their technologies off the campuses and into the market place.

Dr. Brundage said research and development is the key to any state's effort in economic development and the Bucks for Brains program is the envy of the entire nation. He said this program set an ambitious goal that the UK and U of L collectively would be doing over \$500 million in research and development expenditures by the year 2010. Annual expenditures for research and development at the two universities is now well over \$300 million. Dr. Brundage cautioned that the universities will need additional research space to continue this effort.

Dr. Brundage concluded his remarks by saying that to date, through the new economy pools funded in the last two budget cycles, the state has invested \$73 million which has been leveraged with other public and private funds for a total investment of \$264 million.

Representative Marcotte commended Dr. Brundage for an excellent report, and said he was impressed that all areas of the state have been included in this initiative. He reaffirmed his support for the Bucks for Brains Program, and said the state needs to continue funding this program, even in bad budget times.

Senator Leeper said no action was required on the Commissioner's report.

Senator Leeper asked Mr. Ken Clevidence, Associate Vice President of Fiscal Affairs, University of Kentucky (UK), to discuss a project report submitted by the university. Joining Mr. Clevidence at the table were Dr. Dick Siemer, Vice President for Finance and Administration, and Mitch Barnhart, Director of Athletics.

Mr. Clevidence said the university is requesting interim approval for the design of a basketball practice facility to enhance its ability to attract top student athletes and to support the university's basketball program. The project will alleviate scheduling problems at Memorial Coliseum and provide amenities in line with other NCAA basketball facilities in the country. He

said the total scope of the design phase is \$2.5 million, and the university has submitted a request to the 2004 General Assembly for authority to construct the facility at a projected cost of \$25.5 million. Mr. Clevidence said funding will be completely from private sources, and the Council on Postsecondary Education (CPE) approved this project early this month.

Representative Damron asked about the private funding source. Mr. Barnhart said the private funding source will be from the individuals and corporations that want to contribute to the project and not from any increase in ticket assessments.

In response to a question from Representative Wayne, Mr. Clevidence said the \$2.5 million needed for design is in hand. He said UK has pledges for the \$25.5 million needed for construction, and construction will not start until all pledges are in writing.

Representative Wayne asked why the \$2.5 million for design is so high compared to other comparable projects. Mr. Clevidence said the university is asking for the authority to spend \$2.5 million, but they hope to spend no more than \$2 million for design.

In response to a question by Representative Wayne, Mr. Clevidence said the state's prevailing wage law would apply to the project.

Mr. Clevidence next reported on a proposal to construct an 11,500 square foot multi-purpose facility as an addition to the Nutter Field House. The proposed facility will have a seating capacity of approximately 250 persons, a full kitchen and athletic training table, and is intended to service game-day catering needs and host recruiting, athletic department and university departmental functions. UK has certified that the \$4 million in funding needed for the project is available from private sources. Mr. Clevidence said construction of the multi-purpose recruiting facility will not increase the need for operations and maintenance costs from the state's General Fund. Mr. Clevidence said CPE approved this project at its meeting earlier this month.

In response to questions from Representative Wayne, Mr. Clevidence said the estimated cost of design for this project is \$200,000, and the prevailing wage will apply.

Mr. Clevidence then reported two gifts to the university from the Kentucky Medical Services Foundation (KMSF). In order for the university to construct the Biomedical Biological Sciences Research Building authorized in the 2000-02 budget, the university entered into a purchase agreement with KMSF whereby the university purchased certain real property owned and operated by KMSF. The agreement authorized KMSF to construct a new office facility on property owned by UK at 138 Leader Avenue in Lexington. The university staff assisted in the oversight of the project to ensure the new facility met university building standards and codes, and was consistent with campus facility development and use plans. KMSF was responsible for the cost (\$3,212,000) of the new facility, and KMSF will be responsible for associated operation and maintenance costs. As provided in the agreement, KMSF is now proposing to transfer ownership of the newly constructed building to UK. Mr. Clevidence said the agreement grants KMSF the exclusive right to the use of the building without charge as long as KMSF elects to do so, or until the university determines it needs the use of the building or property for its purposes. He said in either event, the university has agreed to purchase the building at its fair market value

less the value of the real estate without improvements. The UK Board of Trustees formally accepted the building as a gift on October 29.

Senator Leeper noted that since this building was procured under a land acquisition pool authorization, no other action was required for that item.

Mr. Clevidence said in addition, an existing building, the Mersack Building, located at 801 South Limestone and currently owned by KMSF, was accepted as a gift by the Board at the same meeting. This facility, built approximately seven years ago by a private firm and valued at \$1,425,000, is a dermatology clinic, and was purchased by KMSF two years ago. The university is using this facility for medical students and as an educational center. UK will maintain and operate the facility.

Mr. Clevidence completed his report by notifying the committee that UK plans to use the design-build team approach for the Center for Pharmaceutical Science and Technology project.

Senator Rhoads made a motion to approve the three UK projects that required committee action: the basketball practice facility, the multipurpose addition to the Nutter Field House, and the Mersack Building. The motion was seconded by Senator Moore and passed by unanimous roll call vote.

Next, Mitchell Payne, Associate Vice President for Business Affairs, University of Louisville, reported that U of L plans to renovate a portion of Threlkeld Hall. The university plans to renovate 3,500 square feet of space to provide a kitchenette area, a computer lab, and ADA upgrades for the university's Honors program. The project scope is \$500,000 – \$300,000 in private funds, and \$200,000 from agency funds.

Senator Leeper asked why this project was not identified in U of L's Six-Year Capital Plan. Mr. Payne said the gift for this particular purpose was probably unexpected. He said he would find out and let the committee know.

Representative Damron made a motion to approve the University of Louisville project. The motion was seconded by Representative Wayne and passed by unanimous roll call vote.

Next, Cicely Lambert, Director of the Administrative Office of the Courts (AOC), and Garlan Vanhook, AOC General Manager of Court Facilities, discussed a court facility cost overrun for the Johnson County Justice Center. The 2000 General Assembly authorized this project, based on a cost of \$7,461,200. At that time, the facility contained approximately 28,000 square feet. The use allowance was authorized at \$596,900 annually.

Ms. Lambert said the phase A design was approved in August 2001, by the Court Facilities Standards Committee (CFSC) and the AOC Facilities Department. At that time, the facility had increased to 37,800 square feet, but the estimated project cost was well within budget. However, due to the many obstacles that were encountered with site acquisition, the project's bid phase was delayed.

While issues surrounding the site acquisition were being resolved, the Kentucky Labor Cabinet reevaluated the prevailing wage rates for the area that includes Johnson County in October 2002, and this reevaluation resulted in increases in the area's prevailing wage rates. Based on bids received last month, the estimated project cost is now \$9,285,000 with an estimated annual use allowance of \$686,400 (15 percent increase). On November 7, CFSC gave preliminary approval to use the Court Facility Use Allowance Contingency Fund to fund the increased cost, contingent upon approval by this committee. The action will reduce the Court Facility Use Allowance Contingency Fund to \$443,400. Ms. Lambert said the CFSC also made its approval contingent upon the county obtaining the deeds to the site before proceeding with the bond sale.

Representative Wayne asked representatives of the Labor Cabinet attending the meeting to explain to the committee how the prevailing wage rates were set in Johnson County. Robin McQuery and Patty Lacy from the Labor Cabinet came forward to respond. Ms. McQuery said the Labor Cabinet held an evidentiary hearing in August 2002 for the Counties of Martin, Pike and Johnson. The hearing sought testimony on wages paid for all labor categories in the area during the period of October 2001 to August 2002. Based on that testimony, new prevailing wage rates for the area were established by the Labor Cabinet on October 3, 2002. The current wage rates will be eligible for review again in Spring 2004.

Representative Marcotte noted the construction for this project is costing \$185 per gross square foot, which is higher than other projects such as the Clay County facility (\$141 per gross square foot) and Breathitt County (\$146 per gross square foot). Ms. Lambert said this is due the increase in the prevailing wage. Mr. Vanhook added that there are a few counties in far Eastern Kentucky where construction costs tend to be higher.

Representative Wayne asked about a chart included in the correspondence to the committee prepared by the construction manager, Codell Construction. The chart compared the wage rates for the area in 2001 and 2002 and also referred to a "burden of 35 percent". Representative Wayne asked for further explanation as to what was meant by the 35 percent burden. Mr. Vanhook said he thought this estimate had to do with the contractors/subcontractors overhead, their profit margins. He said he did not know why Codell used a 35 percent factor. He further stated that the base labor cost and the fringe cost figures in some categories increased dramatically but that the chart provided to the committee estimated the burden figure at 35 percent under both the old and new rates. Mr. Vanhook said that in the future his office would look more carefully at how "burden" is accounted for, and noted that some of the factors that make up the burden estimate might not necessarily increase by the same percentage when wage rates go up.

Representative Wayne asked why Codell Construction was building their profits into the prevailing wage. Mr. Vanhook said the 35 percent burden was a budgeting marker Codell Construction used, but as the construction manager of this project, Codell Construction's fees for services are limited by AOC's rules.

Mr. Vanhook said the hourly base rate for hod carrier (unskilled labor) was \$8.00 in 2001 and increased to \$20.41 in 2002, based on the evidence presented in the hearing.

Since there was no evidence presented relating to bricklayers (skilled labor), the brick layer rate remained unchanged at \$12.00. Regardless of what the profit margins and the so-called burden are on the contractors, the increases on the base are significant. He noted that the fringe benefits for hod carriers increased from \$1.28 to \$8.30 per hour.

Mr. Vanhook said AOC takes into account the prevailing wage rates of an area when preparing its capital requests for projects. If after a project is authorized, labor costs, which typically accounts for 60 percent of project costs, double, it is very difficult to keep the project within budget.

Representative Wayne said as stewards of the people's money he hoped AOC would be tough negotiators with contractors. He said AOC should question closely everything put forth. He said it was unjust to say the entire overrun is due to prevailing wage rate increases, and noted that material costs had probably increased as well, given the long delay in the bidding of the project. He said it was important to note that the point of the prevailing wage law is to assure workers a living wage.

Senator Moore asked if adequate testimony was presented at the hearing. Ms. Lacy said she sent out surveys and gave all contractors who had projects in the area during the previous year an opportunity to participate. Senator Moore said there should be a way to check and make sure local people are participating in the process. Ms. Lacy said the contractors are required to sign an affidavit, and her office periodically checks to make sure that those providing testimony worked on projects within the hearing area.

Representative Marcotte talked about recent successful efforts by some Northern Kentucky cities to hold reverse auctions. Under the process, once bids are received, participants are given a chance to bid lower. Representative Marcotte said the savings from this procurement method have been substantial, and asked if the state could use the method as well. Mr. Bill Hintze, Deputy State Budget Director, Governor's Office for Policy and Management, said the law would have to be changed to do this.

Senator Leeper asked if local governments could use this mechanism for bidding court construction. Mr. Vanhook said he believed counties would still be restricted to a sealed bid process.

Representative Damron asked AOC if they tried to pare back some of the amenities for this project when the bids came in higher than expected. Ms. Lambert said the standards set out in their Real Property Management Guide, which must be followed, are minimal standards.

In response to a question by Senator Leeper, Ms. Lacy said there are 41 total hearing districts.

Senator Leeper asked if it is unusual to have discrepancies as in the case in Johnson County where the unskilled labor rate is so much higher than the skilled worker's rate. Ms. Lacy said it is not common, but she has seen this happen before.

Senator Leeper then asked if it is unusual for there to be such large increases in wage rates for some categories. Ms. Lacy said it is not unusual for this area, and that sometimes the wage rates go down.

Senator Leeper asked if there is any rationale for holding off on this project until the next hearing. Ms. Lacy said the next hearing will be held in December, and 90 days after that, new wage rates will be established. Ms. Lambert said this option was discussed at the last Court Facilities Standards Committee meeting, but rejected. That committee was concerned that the rates could go up even more.

Representative Haydon made a motion to approve the cost overrun for the Johnson County court facility project. The motion was seconded by Senator Rhoads and passed by unanimous roll call vote. However, Representative Marcotte said that the project appears to have been a mess from the beginning, noting that at one point, a lawsuit was filed against the Kentucky Community and Technical College System and the Transportation Cabinet relating to the building site, and he was troubled by the project. Senator Leeper said he thought this project raises several issues besides prevailing wage issues and cited the discussion over what was meant by the 35 percent burden factor.

Mr. Vanhook told the committee that this is the last of the projects authorized in the 2000 session to be bid.

Next, Mr. Hintze and Jamie Link, Acting Commissioner of the Department for Facilities Management, presented the monthly Finance and Administration Cabinet project report.

Mr. Hintze reported an unbudgeted project for the Kentucky Community and Technical College System (KCTCS). He said the project entails construction of a vehicle and pedestrian connection between the two campuses of Somerset Community College. The project scope is \$1,200,000 and is 100 percent federally funded.

In response to a question from Representative Wayne, Mr. Hintze said CPE has approved the project.

Mr. Hintze next reported two items for the Department of Agriculture Purchase of Agriculture Conservation Easement (PACE) program. He reported a \$400,000 transfer from the Department of Agriculture's current year operating budget to the PACE program and the receipt of \$3,615,987 in federal funds for the PACE program. Mr. Hintze said the funds must be matched 50/50 by nonfederal money.

Representative Damron made a motion to approve the KCTCS unbudgeted project and the PACE project scope increase. The motion was seconded by Representative Wayne and passed by unanimous roll call vote.

Mr. Hintze next reported an allocation of \$337,500 from the Heritage Land Conservation Fund (HLCF) to the Department of Fish and Wildlife Resources for the acquisition of 443 acres in Ballard County known as the Virginia Payne Tract. He said this tract of land is located next to the Boatwright Wildlife Management Area in Western Kentucky. The total cost of the project is \$675,000 and will be split 50/50 between the HLCF and federal funds. Senator Leeper said no action was required on land acquisition reports.

Mr. Hintze reported a modification of funding sources for the Department of Military Affairs Aircraft Paint Building project. The committee approved this project in July 2003, at a scope of \$2,971,300. At the time, the committee was told the project was to be 100 percent federally funded. Since then, the department has determined that more design work needs to be done, which will cost \$25,000. The additional design work will not be eligible for federal funds, and the department will instead utilize restricted funds to pay this additional amount. However, the total scope of the project remains at \$2,971,300. Senator Leeper said since the overall scope will not change, no further action is required.

Senator Leeper said the Finance and Administration Cabinet submitted a report of three state leases with square footage modifications for July through September. He said no action was required on this report.

Mr. Warren Nash, Deputy Commissioner, Department for Financial Incentives, Economic Development Cabinet, reported one Economic Development Bond (EDB) project. Mr. Nash reported a grant of \$150,000 to the City of Shepherdsville, Bullitt County, to benefit Institutional Distributors, Inc., a/k/a Gordon Food Services. The funds will be used to construct a 300,000 square foot distribution facility on 80 acres in Shepherdsville. In return for the grant, the company will be required to create 200 full-time jobs within two years of completion of the project and 84 full time jobs within five years of completion of the project. If they do not create or maintain these jobs, the company will be required to pay the City of Shepherdsville \$529 for each job not created or maintained. The average hourly wage for new employees will be \$14.90.

Representative Wayne made a motion to approve the EDB grant for the City of Shepherdsville. The motion was seconded by Representative Damron and passed by unanimous roll call vote.

Senator Leeper said included in members' folders were two reports from the Kentucky Infrastructure Authority (KIA) regarding various new Kentucky KIA 2020 Account/Fund B Grants and new Coal Development Grants. He said the Committee has already approved the 2020/Fund B Grants and the General Assembly authorized each of the coal and tobacco projects identified, and no further action is required.

Mr. George Burgess, Executive Director, Office of Financial Management (OFM), and Mr. Tom Howard, Deputy Executive Director, OFM, presented the bond activity report from the Office of Financial Management. Mr. Howard reported four new bond issues: Kentucky Housing Corporation Housing Revenue Bonds, 2003 Series G & H or additional series as may be designated in an amount not to exceed \$60 million; Northern Kentucky University Consolidated Educational Buildings Revenue Bonds, Series L, dated January 1, 2004, \$10,155,000; Western Kentucky University Consolidated Educational Buildings Revenue Bonds, Series Q, dated November 1, 2003, \$11,160,000; and Kentucky Economic Development Finance Authority (KEDFA) Hospital Facilities Revenue Refunding Bonds, Series 2003D (The Health Alliance of Greater Cincinnati), not to exceed \$34,000,000.

Representative Marcotte made a motion to approve the four new bond issues. The motion was seconded by Representative Wayne and passed by unanimous roll call vote.

Mr. Burgess reported eight new bond issues with School Facilities Construction Commission (SFCC) debt service participation: Burgin Independent (Mercer Co.), Hancock County, Metcalfe County (2), Murray Independent (Calloway Co.), Owensboro Independent (Daviess Co.), Wayne County, and Whitley County. He noted that the Murray Independent School District bond issue utilized the two growth nickel increases to help fund their project.

Senator Moore made a motion to approve the school bond issues. The motion was seconded by Senator Rhoads and passed by roll call vote. Six members voted affirmatively; Representative Damron abstained from the vote, citing a potential conflict of interest.

Senator Leeper said the committee's next meeting is December 16. The meeting is tentatively scheduled for 12:30 p.m. at the new Transportation Cabinet Office Building.

With there being no further business, the meeting adjourned at 2:35 p.m.